
(2016) 05 AHC CK 0196

In the Allahabad High Court

Case No : Criminal Misc. Writ Petition No. 16455 of 2015

Mohd. Arshad Qureshi & 7 Ors

APPELLANT

Vs

State Of U.P. & 2 Ors

RESPONDENT

Date of Decision : 06-05-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 323, 498A, 504

Citation : (2016) 95 ACrC 404 : (2016) 6 ADJ 72

Hon'ble Judges : Amreshwar Pratap Sahi and Pramod Kumar Srivastava, JJ.

Bench : Division Bench

Advocate : Sheshadri Trivedi, Ajay Kumar Pandey, Satish Trivedi, Advocates, for the Appellant; Govt. Advocate, A.K. Mishra, J.P.S. Jaduan, Advocates, for the Respondent

Final Decision : Allowed

Judgement

Pramod Kumar Srivastava, J.— Heard learned counsel for the petitioners and the learned A.G.A., and perused the records.

2. Present petition has been filed for direction in the nature of certiorari for quashing the FIR dated 2.6.2015 in Case Crime No. 145/2015, Sections 498-A, 323, 504 IPC and Section 3/4 Dowry Prohibition Act., P.S. Kotwali Nagar, Aligarh, and for the direction of mandamus commanding the respondent-State and police for not arresting the petitioners in aforesaid case, and for any other suitable writ or direction.

3. One Smt. Sadaf Basit (wife of Mohd. Arshad Quaraishi) had lodged FIR with averment that her marriage was performed on 24.6.2014 with Mohd. Arshad Quaraishi (s/o Riyazuddin, resident of New Delhi) in accordance with Muslim religious customs. In this marriage, her parents had given dowry including Honda City car. After marriage, she came to her husband's house, where from the very beginning her husband, mother-in-law Smt. Shahnaj Begum, father-in-law

Riyazuddin, husband's sisters Smt. Aarshiya Fayaz and Smt. Sabina Rafi, her husband's brother-in-laws Sheikh Fayaz Ahmad and Mohd. Rafi Sheikh, and husband's cousin brother Mohd. Wasim had started passing comments for insufficiency of dowry and had started regular altercation and manhandling with her. After one and a half month of marriage, she was sent out of house of in-laws, with direction to bring Mercedes car. Thereafter, her husband or his family members had not come for bringing her back. After about eight months, he came to know that her mother-in-law is indisposed and was admitted in hospital, then her parents had left her to hospital. But the family members of her husband had beaten her and expelled from the house. Therefore, she had lodged report.

4. On the basis of said report of informant Smt. Sadaf Basit, FIR in Case Crime No. 145/2015, Sections 498-A, 323, 504 IPC and Section 3/4 Dowry Prohibition Act., P.S. Kotwali Nagar, Aligarh was lodged against eight persons named in her report. Those eight named persons had filed present writ petition for quashing the said FIR and direction to respondents for not arresting the petitioners. The grounds mentioned in writ petition are that immediately after marriage, respondent no.-3 Smt. Sadaf Basit (informant) had left the house of husband and went back to her matrimonial home. The allegations contained in FIR are incorrect and no cause of action ever arose at Aligarh, because entire allegations with regard to alleged demand of dowry and cruelty are confined and restricted to New Delhi and no allegations have been made about any alleged harassment or alleged cruelty or any offence in Aligarh. Respondent-informant left her husband's home out of her own free will and volition. Whole allegations contained in FIR are vague and general in nature, without furnishing any specific detail or specific detail of any alleged overt act; but whole of the family members, who live separately from husband and father-in-laws of informant, have also falsely been implicated. The petitioners no. 4, 5, 6 and 7 (Aarshiya Fayaz, Shabina Rafi, Sheikh Fayaz Ahmad and Mohd. Rafi Sheikh) live in Sri Nagar (Jammu & Kashmir) and have nothing to do with affairs of informant or her husband. The petitioners have been falsely implicated in present case to subject them to extortion due to vengeance, and the FIR is outcome of malice. The FIR is devoid of territorial jurisdiction. Due to it fundamental rights of petitioners are going to be violated, because petitioners are apprehending their arrest by the police. Therefore, they have filed present writ petition.

5. Notice of this writ petition was served on respondents including the respondent no.-3 (informant of the FIR), but no objection or counter affidavit was filed by any respondent.

6. From uncontroverted affidavits filed on behalf of petitioners and available records, it is evident that informant was original resident of district Aligarh, U.P., who had married with petitioner no.-1 Mohd. Arshad Qureshi, resident of K-17, Hauz Khas Enclave, New Delhi. If the contents of FIR are accepted to be true, then all the alleged overt acts were committed by named accused persons in Delhi. But by FIR, attempt was made to get the matter investigated by the police

of district Aligarh, U.P. Therefore, the police of district Aligarh or U.P. has no jurisdiction to investigate the matter in question, unless it is specially authorised for is, which has not been done so far. From the evidences and uncontroverted affidavits, it is found that the dispute between the informant and her husband and family members of husband was referred to mediation, which had failed. In this matter, police had not completed the investigation and no charge-sheet has been filed so far. There have been very vague and general allegations in FIR of alleged cruelty by husband and his family members. Four of the petitioners-accused namely, two sisters of husband of informant (petitioners no. 4 and 5) reside with their husbands (petitioners no. 6 and 7) in Sri Nagar (Jammu & Kashmir). They were also implicated in present matter for alleged dowry demand and alleged cruelty. Petitioner no. 8 Mohd. Wasim is not real brother of husband of informant, but he is relative, and cousin of her husband. He was also implicated in this matter without any specific overt act. There is uncontroverted affidavit that petitioners no. 4 to 8 reside separately from husband and in-laws of informant.

7. Learned counsel for the petitioners cited *Geeta Mehrotra v. State of U.P.*, (2012) 10 SCC 741 in which Hon"ble Apex Court has held as under:-

"19. Insofar as the plea of territorial jurisdiction is concerned, it is no doubt true that the High Court was correct to the extent that the question of territorial jurisdiction could be decided by the trial court itself. But this ground was just one of the grounds to quash the proceedings initiated against the appellants under Section 482 Cr.PC wherein it was also alleged that no prima facie case was made out against the appellants for initiating the proceedings under the Dowry Prohibition Act and other provisions of IPC. The High Court has failed to exercise its jurisdiction insofar as the consideration of the case of the appellants is concerned, who are only brother and sister of the complainant's husband and are not alleged even by the complainant to have demanded dowry from her. The High Court, therefore, ought to have considered that even if the trial court at Allahabad had the jurisdiction to hold the trial, the question still remained as to whether the trial against the brother and sister of the husband was fit to be continued and whether that would amount to abuse of process of court.

23. In the instant matter, when the complainant and her husband are divorced as the complainant wife secured an ex parte decree of divorce, the same could have weighed with the High Court to consider whether the proceeding initiated prior to the divorce decree was fit to be pursued in spite of absence of specific allegations at least against the brother and sister of the complainant's husband and whether continuing with this proceeding could not have amounted to abuse of process of court. The High Court, however, seems not to have examined these aspects carefully and has thus sidetracked all these considerations merely on the ground that the territorial jurisdiction could be raised only before the Magistrate conducting the trial.

24. In the instant case, the question of territorial jurisdiction was just one of the

grounds for quashing the proceedings along with the other grounds and, therefore, the High Court should have examined whether the prosecution case was fit to be quashed on other grounds or not. At this stage, the question also crops up whether the matter is fit to be remanded to the High Court to consider all these aspects. But in matters arising out of a criminal case, fresh consideration by remanding the same would further result into a protracted and vexatious proceeding which is unwarranted as was held by this Court in *Ramesh v. State of T.N.* that such a course of remand would be unnecessary and inexpedient as there was no need to prolong the controversy. The facts in that matter on this aspect were although somewhat different since the complainant had lodged the complaint after seven years of delay, yet in the instant matter the factual position remains that the complaint as it stands lacks ingredients constituting the offence under Section 498-A IPC and Sections 3/4 of the Dowry Prohibition Act against the appellants who are the sister and brother of the complainant's husband and their involvement in the whole incident appears only by way of a casual inclusion of their names. Hence, it cannot be overlooked that it would be total abuse of process of law if we were to remand the matter to the High Court to consider whether there were still any material to hold that the trial should proceed against them in spite of absence of prima facie material constituting the offence alleged against them.

27. The High Court in our considered opinion appears to have missed that assuming the trial court had territorial jurisdiction, it was still left to be decided whether it was a fit case to send the appellants for trial when the FIR failed to make out a prima facie case against them regarding the allegation of inflicting physical and mental torture to the complainant demanding dowry from the complainant. Since the High Court has failed to consider all these aspects, this Court as already stated hereinbefore, could have remitted the matter to the High Court to consider whether a case was made out against the appellants to proceed against them. But as the contents of the FIR do not disclose specific allegation against the brother and sister of the complainant's husband except casual reference of their names, it would not be just to direct them to go through protracted procedure by remanding for consideration of the matter all over again by the High Court and make the unmarried sister of the main accused and his elder brother to suffer the ordeal of a criminal case pending against them specially when the FIR does not disclose ingredients of offence under Sections 498-A/323/504/506 IPC and Sections 3/4 of the Dowry Prohibition Act."

8. Considering the uncontroverted averment of writ petition as well as affidavit supporting it, the factum of living separately of five petitioners from husband and in-laws of informant, the lack of jurisdiction of police of U.P. to investigate the matter and the general allegations levelled by informant in her FIR without allegations of any specific act, and considering the vagueness of information mentioned in FIR, and in light of verdict mentioned in aforesaid ruling of Hon'ble Apex Court, the petitioner's case is found believable; and therefore this appears to be a case, in which petitioner should succeed and FIR should be quashed.

9. Accordingly, this writ petition is allowed. The FIR dated 2.6.2015 relating to case crime no. 145 of 2015, under Sections 498-A, 323, 504 IPC and Section 3/4 of Dowry Prohibition Act, P.S. Kotwali Nagar, District Aligarh, and the criminal proceedings emanating from it are hereby quashed.